

AUG - 4 1994
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In the Supreme Court of the United States
OCTOBER TERM, 1993

FEDERAL ELECTION COMMISSION, PETITIONER,

v.

NRA POLITICAL VICTORY FUND, ET AL., RESPONDENTS.

*ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT*

JOINT APPENDIX

LAWRENCE M. NOBLE
General Counsel

RICHARD B. BADER*
Associate General Counsel

VIVIEN CLAIR
Attorney

FEDERAL ELECTION
COMMISSION
999 E Street, N.W.
Washington, D.C. 20463
Telephone: (202) 219-3690
Counsel for Petitioner

CHARLES J. COOPER*
MICHAEL A. CARVIN
ROBERT J. CYNKAR
WILLIAM L. MCGRATH
SHAW, PITTMAN, POTTS &
TROWBRIDGE
2300 N Street, N.W.
Washington, D.C. 20037
Telephone: (202) 663-8000
Counsel for Respondents

*Counsel of Record

**PETITION FOR CERTIORARI FILED JANUARY 18, 1994
CERTIORARI GRANTED JUNE 20, 1994**

39 p

JOINT APPENDIX

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NOTATION

The following documents have been omitted in printing this Joint Appendix because they appear on the following pages in the appendix to the printed Petition for Certiorari:

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Federal Election Commission, Certification dated 10/18/89 of Commission vote finding reason to believe that respondents had violated 2 U.S.C. § 441b(a)	36a
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U.S. DISTRICT COURT USDC District of Columbia (Washington)

CIVIL DOCKET FOR CASE #: 90-CV-3090

FEDERAL ELECTION COMMISSION, PLAINTIFF

v.

NRA POLITICAL VICTORY FUND, GRANT A. WILLS, AS
TREASURER OF THE NRA POLITICAL VICTORY FUND, AND
NATIONAL RIFLE ASSOCIATION — INSTITUTE FOR
LEGISLATIVE ACTION, DEFENDANTS

Docket as of November 12, 1992 (10:32 a.m.)

PROCEEDINGS

12/20/90	1	COMPLAINT filed summons issued (3) (dot) [Entry date 12/31/90]
1/18/91	2	ACKNOWLEDGMENT OF RECEIPT of summons and complaint upon defendant NRA POLITICAL, defendant GRANT A. WILLS, defendant NRA-INSTITUTE (accepted by Robert Dowlut, attorney) on 1/17/91 by mail (kk) [Entry date 01/24/91]
2/6/91	3	ANSWER to the complaint for defendant NRA POLITICAL, defendant GRANT A. WILLS, defendant NRA-INSTITUTE (kk) [Entry date 02/07/91]
		* * * * *
7/19/91	6	MOTION by plaintiff FEC for summary judgment (lpp) [Entry date 07/22/91]

- 7/19/91 7 MOTION by defendant NRA POLITICAL, defendant GRANT A. WILLS, defendant NRA-INSTITUTE for summary judgment (lpp) [Entry date 07/22/91]
- 8/20/91 8 RESPONSE by plaintiff FEC in opposition to motion for summary judgment [7-1] by NRA POLITICAL, GRANT A. WILLS, NRA-INSTITUTE (lpp) [Entry date 08/21/91]
- 8/20/91 9 RESPONSE (OPPOSITIONS) by defendant NRA-INSTITUTE, defendant GRANT A. WILLS, defendant NRA POLITICAL to Plaintiff's statement of material facts not in dispute (lpp) [Entry date 08/21/91]
- 9/6/91 10 REPLY by plaintiff FEC to response to motion for summary judgment [6-1] by FEC (lpp) [Entry date 09/09/91]
- 9/6/91 11 REPLY by defendant NRA-INSTITUTE, defendant GRANT A. WILLS, defendant NRA POLITICAL to response to motion for summary judgment [7-1] by NRA POLITICAL, GRANT A. WILLS, NRA-INSTITUTE (lpp) [Entry date 09/09/91]
- * * * * *
- 11/15/91 13 MEMORANDUM OPINION by Judge Stanley Sporkin (N) (egf)
- 11/15/91 14 ORDER by Judge Stanley Sporkin that defendants and persons in active concert with them in their activities shall not make or receive payments made by a corporation to a segregated fund to reimburse said fund for solicitation expenses unless

such payments are made in accordance with each and every requirement of 11 CFR 114.5(b)(3); the defendants shall pay a civil penalty measured by the amount of the total costs incurred by FEC in investigating and prosecuting this action and within 15 days the plaintiff shall submit to the Court a full accounting of all such costs: (N) (egf)

- 11/21/91 15 NOTICE OF APPEAL by defendant NRA-INSTITUTE, defendant GRANT A. WILLS, defendant NRA POLITICAL from order [14-1] entered 11/15/92, Filing and Docketing Fees Paid: \$105.00 Copies sent to: Charles J. Cooper and V. Collen Miller (lpp) [Entry date 11/22/91]
- 11/22/91 - TRANSMITTED PRELIMINARY RECORD on appeal [15-1] by NRA POLITICAL, GRANT A. WILLS, NRA-INSTITUTE to U.S. Court of Appeals (lpp)
- 12/2/91 16 MOTION by plaintiff FEC to amend or clarify order [14-1] (lpp) [Entry date 12/06/91]
- 12/6/91 - USCA # 91-5360 assigned for appeal [15-1] by NRA POLITICAL, GRANT A. WILLS, NRA-INSTITUTE (lpp) [Entry date 12/17/91]
- 12/10/91 19 RESPONSE by defendant NRA-INSTITUTE, defendant GRANT A. WILLS in opposition to motion to amend or clarify order [14-1] [16-1] by FEC (tmp) [Entry date 12/17/91]
- 12/11/91 17 MEMORANDUM OPINION by Judge Stanley Sporkin (N) (egf)

- 12/11/91 18 ORDER by Judge Stanley Sporkin directing that the defendants shall collectively pay a civil penalty in the amount of \$40,000: (N) (egf)
- 12/20/91 20 MEMORANDUM AND ORDER by Judge Stanley Sporkin directing the defendants to pay the judgment within 30 days: (N) (egf)
- * * * * *
- 1/17/92 22 ORDER by Judge Stanley Sporkin: granting motion to stay execution of judgment without bond pending appeal [21-1] by NRA POLITICAL, GRANT A. WILLS, NRA-INSTITUTE and that defendants are not required to post a supersedeas bond for the amount of the judgment (N) (cjp)

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

91-5360

FEDERAL ELECTION COMMISSION

v.

NRA POLITICAL VICTORY FUND, ET AL., APPELLANTS

APPEAL FROM THE DISTRICT COURT
GENERAL DOCKET

DATE	FILINGS - PROCEEDINGS
(J) 11/29/91	Copy of notice of appeal and docket entries from clerk, USDC (n-2).
(J) 11/29/91	Docketing fee was paid in the district Court on 11/21/91.
* * * * *	
(N) 11/17/92	15 - APPELLANTS BRIEF (p-17)
(N) 11/17/92	7 - APPELLANTS APPENDIX (p-17)
(N) 12/17/92	15 - APPELLEE (FEC) BRIEF (m-17) [6 to 25].
* * * * *	
(N) 12/31/92	15 - APPELLANTS REPLY BRIEF (m-31) [6 to 25].
(wl) 2/1/93	ARGUED BEFORE: Wald, Ruth B. Ginsburg, and Silberman Circuit Judges.

DATE FILINGS—PROCEEDINGS

- (cb) 10/22/93 Opinion for the Court filed by Circuit Judge Silberman.
- (cb) 10/22/93 Judgment for the Court that the judgment of the district court is hereby reversed, in accordance with the opinion for the Court filed herein this date.
- (cb) 10/22/93 Order delaying mandate.
- (cb) 10/25/93 Per Curiam Order for the Court that the opinion filed 10/25/93, is hereby amended, See Order for details. Wald and Silberman, CJs.
- * * * * *
- (cb) 12/23/93 MANDATE ISSUED.
- * * * * *
- (H) 01/24/94 Notification from Clerk, Supreme court of the filing of a petition for writ of certiorari on 01/18/94. S. Ct. No. 93-1151. [1].
- * * * * *
- (E) 06/22/94 Notification from Clerk, Supreme Court granting the petition for writ of Cert. on 6/20/94 No. 93-1151. [1]

A True copy:

Test: Ron Garvin

United States Court of Appeals
for the District of Columbia Circuit

By: /s/ [Signature Illegible] Deputy Clerk

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

CIVIL ACTION NO.

FEDERAL ELECTION COMMISSION
999 E Street, N.W.
Washington, D.C. 20463
(202) 376-8200
PLAINTIFF,

v.

NRA POLITICAL VICTORY FUND
1600 Rhode Island Avenue, N.W.
Washington, D.C. 20036
(202) 828-6000

and

**GRANT A. WILLS, as Treasurer of
the NRA Political Victory Fund**
1600 Rhode Island Avenue, N.W.
Washington, D.C. 20036
(202) 828-6000

and

**NATIONAL RIFLE ASSOCIATION—
INSTITUTE FOR LEGISLATIVE ACTION**
1600 Rhode Island Avenue, N.W.
Washington, D.C. 20036
(202) 828-6000

**COMPLAINT FOR DECLARATORY, INJUNCTIVE
AND OTHER APPROPRIATE RELIEF**

Jurisdiction

1. This action seeks declaratory, injunctive and other appropriate relief pursuant to the express authority granted to the Federal Election Commission (the "Commission") by the Federal Election Campaign Act of 1971, as amended (the "Act"). 2 U.S.C. §§ 431 *et seq.* This court has jurisdiction over this suit pursuant to 28 U.S.C. § 1345 as an action brought by an agency of the United States expressly authorized to sue by an Act of Congress. *See* 2 U.S.C. §§ 437d(a)(6) and 437g(a)(6)(A).

Venue

2. Venue is properly found in the District of Columbia in accord with 2 U.S.C. § 437g(a)(6)(A), as the defendants can be found, reside and/or transact business in this district.

Parties

3. Plaintiff Federal Election Commission is the independent agency of the United States government empowered with exclusive jurisdiction with respect to the administration, interpretation and civil enforcement of the Federal Election Campaign Act of 1971, as amended (the "Act"). *See generally* 2 U.S.C. §§ 437c(b)(1), 437d(a) and 437g. The Commission is authorized to institute investigations of possible violations of the Act, 2 U.S.C. § 437g(a)(1) and (2), and has exclusive jurisdiction to initiate civil actions in the United States district courts to obtain judicial enforcement of the Act. 2 U.S.C. §§ 437c(b)(1) and 437d(e).

4. Defendant NRA Political Victory Fund ("Victory Fund") is a political committee registered with the Commission pursuant to 2 U.S.C. § 431(4). The Victory Fund

is the separate segregated fund of the National Rifle Association of America ("NRA"). The NRA is incorporated in New York and authorized to do business in the District of Columbia.

5. Defendant Grant A. Wills currently serves as treasurer of the Victory Fund. *See* 2 U.S.C. § 432(a).

6. Defendant National Rifle Association-Institute for Legislative Act ("ILA") is the lobbying arm of the NRA. The ILA operates from a corporate account of the NRA. *See Federal Election Commission v. National Rifle Association*, No. 85-1018, slip op. at 3 n.1 (D.D.C. July 27, 1989) (copy attached).

Administrative Proceedings

7. Acting on the basis of information ascertained in the normal course of carrying out its supervisory responsibilities, on October 17, 1989, the Commission, by the affirmative vote of at least four of its members, found reason to believe that the Victory Fund and Grant A. Wills, as treasurer, violated 2 U.S.C. § 441b(a), a provision of the Act. On that same date, the Commission also found reason to believe that the ILA violated 2 U.S.C. § 441b(a). The Commission notified the defendants of its reason to believe findings by letter dated November 2, 1989. 2 U.S.C. § 437g(a)(2).

8. After conducting an investigation, the Commission notified the defendants, by letter dated February 9, 1990, that the General Counsel was prepared to recommend that the Commission find probable cause to believe that defendants had violated the Act and provided the defendants with a brief stating the legal and factual issues of the case. On March 12, 1990, the defendants submitted a reply brief for consideration by the Commission.

9. On April 24, 1990, the Commission, by the affirmative vote of at least four of its members, found probable cause to believe that the Political Victory Fund and Grant A. Wills, as treasurer, violated 2 U.S.C. § 441b(a). In addition, the Commission also found probable cause to believe that the ILA violated 2 U.S.C. § 441b(a).

10. Pursuant to 2 U.S.C. § 437g(a)(4), the Commission notified the defendants of its findings of probable cause, by letter dated May 2, 1990, and offered the defendants an opportunity to correct those violations through conciliation. Thereafter, the Commission endeavored, without success, for a period of not less than thirty (30) days, by the informal methods of conference, conciliation and persuasion, to enter into a conciliation agreement with the defendants.

11. Unable through informal methods to secure an acceptable conciliation agreement, the Commission determined, on September 18, 1990, by the affirmative vote of at least four of its members, to authorize the initiation of this civil suit for relief in federal district court against the defendants. *See* 2 U.S.C. § 437g(a)(6). By letter dated September 21, 1990, the Commission notified the defendants of its action.

12. The plaintiff Commission has satisfied all the jurisdictional prerequisites to the filing of this suit.

Statement of Claim

13. Plaintiff incorporates herein by reference the allegations contained in paragraphs 1 through 12.

14. 2 U.S.C. § 441b(a) prohibits corporations from making contributions or expenditures in connection with a federal election and prohibits political committees from knowingly accepting contributions or expenditures from corporations.

15. 2 U.S.C. § 441b(b)(2) provides that the term "contribution or expenditure" includes any direct or indirect payment, advance, deposit, or gift of money, or anything of value to any candidate, campaign committee, or political party or organization, in connection with any federal election.

16. 2 U.S.C. § 441b(b)(2)(C) provides that the term "contribution or expenditure" does not include the establishment, administration, and solicitation of contributions to a separate segregated fund to be utilized for political purposes by a corporation.

17. 11 C.F.R. § 114.5(b) allows a corporation to use general corporate treasury monies only for the establishment, administration, and solicitation of contributions to its separate segregated fund.

18. 11 C.F.R. § 114.5(b)(3) provides that if the separate segregated fund pays any administrative expense from its own account which the corporation could have paid for as an administrative expense, the corporation may reimburse the separate segregated fund no later than thirty (30) calendar days after the expense was paid by the separate segregated fund.

19. In 1988, the ILA initially paid for production costs and postage for two solicitations to the separate segregated fund, the Victory Fund. The ILA paid \$132,756.17 in initial production costs, \$91,315.05 in additional production costs and \$90,119.56 in postage for a March 1988 fundraiser. Additionally, ILA paid \$101,533.94 in postage for a 1988 July fundraiser, for a total of \$415,744.72 in solicitation costs for the two fundraisers.

20. On August 1, 1988, the Victory Fund reimbursed the ILA \$415,744.72 for the expenses incurred in connection with the March and July fundraisers.

21. On October 20, 1988, the ILA paid the sum of \$415,744.72 to the Victory Fund.

22. The ILA's payment of \$415,744.72 to the Victory Fund on October 20, 1988, constituted a corporate contribution to the Victory Fund in violation of 2 U.S.C. § 441b(a).

23. The Victory Fund accepted a \$415,744.72 corporate contribution from the ILA on October 20, 1988 in violation of 2 U.S.C. § 441b(a).

PRAYER FOR RELIEF

Wherefore, the plaintiff Federal Election Commission prays that this Court:

1. Declare that the defendants NRA Political Victory Fund and Grant A. Wills, as its Treasurer, violated 2 U.S.C. § 441b(a) by accepting a corporate contribution totaling \$415,744.72 from the National Rifle Association—Institute for Legislative Action;

2. Declare that the defendant National Rifle Association—Institute for Legislative Action violated 2 U.S.C. § 441b(a) by making a corporate contribution totaling \$415,744.72 to the NRA Political Victory Fund;

3. Assess a civil penalty against defendants NRA Political Victory Fund and Grant A. Wills, as its Treasurer, in the amount of the greater of \$5,000 or 100 percent of the amount involved in that violation. *See* 2 U.S.C. § 437g(a)(6)(A);

4. Assess a civil penalty against defendants National Rifle Association—Institute for Legislative Action in the amount of the greater of \$5,000 or 100 percent of the amount involved in that violation. *See* 2 U.S.C. § 437g(a)(6)(A);

5. Permanently enjoin the defendants from further similar violations of the Federal Election Campaign Act of 1971, as amended;

6. Award the plaintiff Federal Election Commission its costs in this action; and

7. Grant the plaintiff Federal Election Commission such other relief as may be appropriate.

Respectfully submitted,

/s/ LAWRENCE M. NOBLE

Lawrence M. Noble
General Counsel
(D.C. Bar No. 244434)

/s/ RICHARD B. BADER

Richard B. Bader
Associate General Counsel
(D.C. Bar No. 911073)

/s/ DAVID M. FITZGERALD

David M. FitzGerald
Assistant General Counsel

/s/ V. COLLEEN MILLER

V. Colleen Miller
Attorney

December 20, 1990

FOR THE PLAINTIFF
FEDERAL ELECTION COMMISSION
999 E Street, N.W.
Washington, D.C. 20463
(202) 376-8200

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CIVIL ACTION NO. 90-3090 (SS)

FEDERAL ELECTION COMMISSION, PLAINTIFF,

v.

NRA POLITICAL VICTORY FUND
1600 Rhode Island Avenue, N.W.
Washington, D.C. 20036

and

GRANT A. WILLS, as Treasurer of
the NRA Political Victory Fund
1600 Rhode Island Avenue, N.W.
Washington, D.C. 20036

and

NATIONAL RIFLE ASSOCIATION—
INSTITUTE FOR LEGISLATIVE ACTION
1600 Rhode Island Avenue, N.W.
Washington, D.C. 20036
DEFENDANTS.

ANSWER

Defendants NRA Political Victory Fund ("NRA PVF"), Grant A. Wills, and National Rifle Association—Institute for Legislative Action ("NRA-ILA"), for their answer to the Complaint of Plaintiff Federal Election Commission ("FEC") state as follows:

First Defense

Plaintiff's Complaint fails to state a claim against Defendants upon which relief can be granted.

Second Defense

This Court lacks jurisdiction over the subject matter of Plaintiff's Complaint.

Third Defense

Defendants did not violate 2 U.S.C. § 441b(a) by either making or receiving a corporate contribution of \$415,744.72 because that amount constituted the payment of solicitation costs to a separate segregated fund pursuant to 2 U.S.C. § 441b(b)(2)(C).

Fourth Defense

Under 2 U.S.C. § 438(e), no sanction, including the civil penalties and injunctive relief sought by Plaintiff, may be imposed on Defendants by this Court because all of Defendants' actions alleged by Plaintiff as the basis for such sanctions were taken in good faith reliance on plaintiff's rules and regulations, specifically 11 C.F.R. §§ 114.1(a)(2)(iii) and 114.5(b), and Plaintiff is equitably estopped from seeking such penalties and relief.

Fifth Defense

Defendants did not violate 2 U.S.C. § 441b(a) by either making a corporate expenditure, or receiving a corporate contribution, of \$415,744.72 because that amount was not expended for "express advocacy" subject to the prohibition of that statute.

Sixth Defense

Defendants did not violate 2 U.S.C. § 441b(a) as a result of the payment of \$415,744.72 by the NRA-ILA to the NRA PVF on October 20, 1988, because that amount was expended for communications by a membership organization to its members within the meaning of 2 U.S.C. § 431(9)(B)(iii).

Seventh Defense

To the extent 2 U.S.C. § 441b(a) prohibited payment of \$415,744.72 by the NRA-ILA to the NRA PVF on October 20, 1988, it constitutes a violation of Defendants' First Amendment rights.

Eighth Defense

Plaintiff has no legal authority to initiate and maintain this action because Plaintiff failed to meet the statutory prerequisite of establishing that there was probable cause to believe that Defendants had committed the violation of 2 U.S.C. § 441b(a) alleged in Plaintiff's Complaint. No evidence was identified in the brief of Plaintiff's General Counsel, required to be submitted to Plaintiff and Defendants under 2 U.S.C. § 437g(a)(3), that contradicted the evidence and claim of Defendants that the payment at issue was made for solicitation costs within the meaning of 2 U.S.C. § 441b(b)(2)(C) and could not constitute a violation of 2 U.S.C. § 441b(a).

Ninth Defense

Under the doctrine of separation of powers and Art. II, Sec. 1, Cl. 1 of the United States Constitution, Plaintiff has no legal authority to initiate or maintain this action because Plaintiff is statutorily required to include as non-

voting, *ex officio* members the Secretary of the Senate and the Clerk of the House of Representatives.

Tenth Defense

Plaintiff has no legal authority to initiate or maintain this action because its members have been appointed in conformity with the limitations imposed by 2 U.S.C. § 437c(a)(1), an unconstitutional statutory restriction on the President's nomination power under Art. II, Sec. 2, Cl. 2 of the United States Constitution.

Eleventh Defense

The statutory delegation to Plaintiff FEC, an "independent agency of the United States government," of "exclusive jurisdiction with respect to the administration, interpretation and civil enforcement of the Federal Election Campaign Act of 1971, as amended," is unconstitutional under the doctrine of separation of powers and Art. II, Sec. 1, Cl. 1 of the United States Constitution. Accordingly, Plaintiff has no legal authority to initiate or maintain this action.

Twelfth Defense

To the extent that the allegations of Plaintiff's Complaint are based on an application of any rule or regulation of the FEC, this action must be dismissed because those rules or regulations are promulgated pursuant to an unconstitutional legislative veto under 2 U.S.C. § 438(d).

Thirteenth Defense

Defendants respond to the averments in each of the numbered paragraphs of Plaintiff's Complaint as follows:

1. Paragraph 1 of Plaintiff's Complaint states conclusions of law and characterizations of the Complaint as to which no answer is required; to the extent an answer is required, however, Defendants deny the averments of Paragraph 1 of Plaintiff's Complaint.

2. Paragraph 2 of Plaintiff's Complaint states conclusions of law as to which no response is required; to the extent an answer is required, however, Defendants deny the averments of Paragraph 2 of Plaintiff's Complaint.

3. Paragraph 3 of Plaintiff's Complaint states characterizations of Plaintiff's legal authority and other conclusions of law as to which no response is required; to the extent an answer is required, however, Defendants deny the averments of Paragraph 3 of Plaintiff's Complaint. Defendants further answer this Paragraph by stating that 2 U.S.C. §§ 437c(b), 437d(a), 437d(e), and 437g speak for themselves.

4. Defendants admit the averments in Paragraph 4 of Plaintiff's Complaint.

5. Defendants deny the averments of Paragraph 5 of Plaintiff's Complaint, except that Defendants admit that Grant A. Wills currently serves as Treasurer of the NRA PVF.

6. Defendants deny the averments of Paragraph 6 of Plaintiff's Complaint, except that Defendants admit that the NRA-ILA has, among other duties, the sole responsibility to administer the legislative activities of the National Rifle Association of America relating to the defense or furtherance of the right to keep and bear arms and that the NRA-ILA operates from bank accounts that are separate and segregated from those of the National Rifle Association of America.

7. Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments in the first and second sentences of Paragraph 7 of Plaintiff's

Complaint. Defendants deny the averments in the third sentence of Paragraph 7 of Plaintiff's Complaint, except that Defendants admit that Grant A. Wills, Treasurer of the NRA PVF, received a letter dated November 2, 1989 from Danny L. McDonald, Chairman of the FEC, which speaks for itself, and that Wayne R. LaPierre, Jr., Executive Director of the NRA-ILA, received a letter dated November 2, 1989, from Danny L. McDonald, Chairman of the FEC, which speaks for itself.

8. Defendants deny the averments of the first sentence of Paragraph 8 of Plaintiff's Complaint, except that Defendants admit that Robert Dowlut, Deputy General Counsel of the National Rifle Association of America, received a letter dated February 9, 1990, from Lawrence M. Noble, General Counsel of the FEC, which speaks for itself. Defendants admit the averments of the second sentence of Paragraph 8 of Plaintiff's Complaint.

9. Paragraph 9 of Plaintiff's Complaint states conclusions of law as to which no answer is required; to the extent an answer is required, however, Defendants deny the averments of Paragraph 9 of Plaintiff's Complaint.

10. Defendants deny the averments of Paragraph 10 of Plaintiff's Complaint, except that Defendants admit that Robert Dowlut, Deputy General Counsel of the National Rifle Association of America, received a letter from Lawrence M. Noble, General Counsel of the FEC, dated May 2, 1990, which speaks for itself, and that the FEC did not enter into a Conciliation Agreement with Defendants.

11. Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments in the first sentence of Paragraph 11 of Plaintiff's Complaint. Defendants deny the averments in the second sentence of Paragraph 11 of Plaintiff's Complaint, except that Defendants admit that Robert Dowlut, Deputy General Counsel of the National Rifle Association of

America, received a letter from Lawrence M. Noble, General Counsel of the FEC, dated September 21, 1990, which speaks for itself.

12. Paragraph 12 of Plaintiff's Complaint states conclusions of law as to which no response is required; to the extent an answer is required, however, Defendants deny the averments in Paragraph 12 of Plaintiff's Complaint.

13. In response to the averments of Paragraph 13 of Plaintiff's Complaint, Defendants incorporate by reference, repeat, and re-allege their answers to Paragraphs 1 through 12 of the Complaint as if fully set forth herein.

14. Paragraph 14 of Plaintiff's Complaint states conclusions of law as to which no answer is required; to the extent an answer is required, however, Defendants deny the averments in Paragraph 14 of Plaintiff's Complaint. Defendants further answer this Paragraph by stating that 2 U.S.C. § 441b(a) speaks for itself.

15. Paragraph 15 of Plaintiff's Complaint states conclusions of law as to which no answer is required; to the extent an answer is required, however, Defendants deny the averments in Paragraph 15 of Plaintiff's Complaint. Defendants further answer this Paragraph by stating that 2 U.S.C. § 441b(b)(2) speaks for itself.

16. Paragraph 16 of Plaintiff's Complaint states conclusions of law as to which no answer is required; to the extent an answer is required, however, Defendants deny the averments in Paragraph 16 of Plaintiff's Complaint. Defendants further answer this Paragraph by stating that 2 U.S.C. § 441b(b)(2)(C) speaks for itself.

17. Paragraph 17 of Plaintiff's Complaint states conclusions of law as to which no answer is required; to the extent an answer is required, however, Defendants deny the averments of Paragraph 17 of Plaintiff's Complaint. Defendants further answer this Paragraph by stating that 11 C.F.R. § 114.5(b) speaks for itself.

18. Paragraph 18 of Plaintiff's Complaint states conclusions of law as to which no answer is required; to the extent an answer is required, however, Defendants deny the averments in Paragraph 18 of Plaintiff's Complaint. Defendants further answer this Paragraph by stating that 11 C.F.R. § 114.5(b)(3) speaks for itself.

19. Defendants admit the averments in the first and second sentences of Paragraph 19 of Plaintiff's Complaint. Defendants admit the averments in the third sentence of Paragraph 19 of Plaintiff's Complaint, except that the amount NRA-ILA paid in postage for a 1988 July fundraiser should be \$101,553.94.

20. Defendants admit the averments in Paragraph 20 of Plaintiff's Complaint.

21. In response to the averments of Paragraph 21 of Plaintiff's Complaint, Defendants admit that the NRA-ILA expended \$415,744.72 in connection with March and July 1988 fundraisers for the NRA PVF; that the NRA PVF reimbursed the NRA-ILA for these expenses on August 1, 1988; and that the NRA-ILA returned this reimbursement to the NRA PVF on October 20, 1988.

22. Defendants deny the averments in Paragraph 22 of Plaintiff's Complaint.

23. Defendants deny the averments in Paragraph 23 of Plaintiff's Complaint.

Except as expressly admitted or otherwise stated above, Defendants deny each and every averment in Plaintiff's Complaint. Defendants further deny that Plaintiff is entitled to the relief sought in Plaintiff's prayer for relief and denies that Plaintiff is entitled to any relief whatsoever.

WHEREFORE, having fully answered Plaintiff's Complaint, Defendants respectfully pray that (a) judgment be entered in favor of Defendants and against Plaintiff, (b) that Plaintiff's Complaint be dismissed with prejudice and with all costs of this action assessed against Plaintiff, and

(c) that this Court award to Defendants an amount sufficient to compensate Defendants for all expenses, including attorney's fees, incurred in connection with this action and such other and further relief as the law and evidence may justify and as this Court may deem just and proper.

Respectfully submitted,

/s/ CHARLES J. COOPER

Charles J. Cooper
Attorney No. 248070

Michael A. Carvin
Attorney No. 366784

Robert J. Cynkar
Attorney No. 957845

Elisabeth T. Roth
Attorneys for Defendants
NRA Political Victory Fund
Grant A. Wills
National Rifle Association –
Institute for Legislative Action
Shaw, Pittman, Potts &
Trowbridge
2300 N Street, N.W.
Washington, D.C. 20037
(202) 663-8000

[Certificate of Service omitted in printing.]

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

C.A. No. 90-3090 (SS)

FEDERAL ELECTION COMMISSION, PLAINTIFF,

v.

NRA POLITICAL VICTORY FUND, ET AL., DEFENDANTS.

AFFIDAVIT OF GRANT A. WILLS

I, Grant A. Wills, being duly sworn, depose and say:

1. I am the Treasurer of the National Rifle Association Political Victory Fund ("PVF") and the Fiscal Officer of the National Rifle Association – Institute for Legislative Action ("ILA"). My responsibilities include maintaining complete contribution records and reports, planning and developing financial reporting systems, and preparing, implementing, and conducting fundraising activities.

2. I have been with the National Rifle Association of America ("NRA") for nine years. For my first four years, I served as Assistant Fiscal Officer of the ILS and became the ILS's Fiscal Officer five years ago. For the last six years, I have also served as Treasurer of the PVF.

The National Rifle Association of America

3. The NRA is an educational, recreational, and public service association, in the form of a non-profit, non-stock membership corporation, tax exempt under section 501(c)(4) of the Internal Revenue Code, dedicated to

the right of the individual law abiding citizen to own and use firearms for recreation and defense. As part of its commitment to that right, the NRA has maintained a vigorous and well-known effort to represent its members' views to Congress, the Executive Branch, and state and local governments. Indeed, adding to the collective voice of the NRA to preserve the right to keep and bear arms is the reason most sportsmen, gun owners, and others join the NRA.

4. Any law abiding natural person who subscribes to the objectives and purposes of the NRA is eligible to become an individual member. Non-business entities, such as gun clubs and similar membership associations who subscribe to the objectives and purposes of the NRA, are eligible to become organization members. Organization members do not have any voting privileges within the NRA. No business corporations or labor unions may become members of the NRA. In 1988 the NRA had 2,776,696 individual members and 42,285 organization members. The NRA has no shareholders or other persons affiliated so as to have a claim on its assets or earnings. There are, of course, millions of gun owners who are not NRA members. Virtually all of the NRA's members joined the NRA because they perceived that their rights to own and use firearms are in jeopardy and that the preservation of those rights require them to become involved in legislative and political activities. Thus, NRA members almost invariably joined the NRA as a result of a clear decision to participate in the collective speech of the NRA.

5. The NRA is not affiliated with any business corporation, including any arms or ammunition manufacturer or any business that deals in guns or ammunition. The NRA derives the majority of its revenues from membership dues, which totaled \$45,404,300 in 1988. The NRA does not solicit contributions. However, in addition to its

membership dues, in 1988 the NRA received a small amount of unsolicited monetary support in the form of legacies, bequests, and contributions which totalled \$103,042.25. This amount included no contributions from labor unions and only \$1,774.50 in unsolicited contributions from business corporations.

6. The NRA publishes *American Rifleman*, *American Hunter*, *Insights*, and *Shooting Sports, USA*. In 1988, the advertising revenues for these periodicals totaled \$8,031,797. Publishing these periodicals in 1988 cost a total of \$17,725,922.

7. In addition, various NRA events and activities received partial corporate monetary and in-kind support, such as donated firearms awarded as prizes in shooting competitions, totaling approximately \$434,314 in 1988. Those events and activities were the National Action Pistol Championship, the National Coaches Conference, the National Instructor Conference, development of a slide presentation on the U.S. Olympic Shooting Team, the North American Hunter Education Championship, the Western Big Game Hunting School, the National Championship Competitions, booth rental at the NRA Annual Meeting, and miscellaneous activities of NRA representatives including tours of manufacturing plants, press seminars, on-site new products testing and evaluation, and travel related to periodical articles. In short, the NRA is not a "conduit" for corporate money into the political marketplace.

8. The educational, recreational and other nonpolitical activities of the NRA are all related to the furtherance of the right to keep and bear arms, including activities to train individuals in marksmanship and in the safe handling of firearms, activities to promote the shooting sports, and activities to promote hunting as a shooting sport and to promote hunter safety.

9. In 1988, the NRA's gross receipts were \$68,240,768 and its gross expenditures were \$74,732,953.

The NRA Institute for Legislative Action

10. As its name implies, the ILA is the component of the NRA that, under the Bylaws of the NRA, Defs. Exh. 2 at 31-33, has the sole responsibility to administer the legislative, legal, informational, and fund raising activities of the NRA relating to the defense or furtherance of the right to keep and bear arms, in accordance with the objectives and policies established by the NRA Board of Directors. The ILA does not participate in the recreational or other nonpolitical activities of the NRA. The ILA is not affiliated with any political party or campaign committee.

11. Pursuant to the Bylaws of the NRA, Defs. Exh. 2 at 16-17, the ILA operates from bank accounts that are separate and segregated from those of the NRA and of the PVF. In 1988, the ILA's gross receipts were \$21,604,243, and its gross expenditures were \$21,016,952. The ILA's gross receipts came from the fund raising efforts of the ILA, funds transferred by the NRA to the ILA for overhead and operating expenses, and funds transferred by the NRA to the ILA for special projects.

12. In 1988, the ILA received total contributions of \$9,396,165. Of that amount, \$24,689.95 — or 0.26% — was received from business corporations. The ILA publishes *NRAAction*, in which no advertising appears. No ILA event was sponsored, subsidized, or otherwise supported by any business corporation or labor organization during 1988.

13. The Bylaws of the NRA explicitly prohibit the NRA, the ILA, or any officer, director, employee, or agent acting on behalf of the NRA or the ILA from making any contribution to a political campaign, candidate, or political committee. Defs. Exh. 2 at 33.

14. Though the ILA's finances are maintained separately from those of the NRA generally, NRA members understand that advocacy and expression in public and political forums concerning the right to keep and bear firearms are essential parts of the mission of the NRA — a mission of which they become a part in joining the NRA — and that the ILA is the component of the NRA responsible for that advocacy and expression. Consistent with this mission and the role of the ILA within the NRA, NRA members understand that NRA general funds are regularly used to support the activities of the ILA. The Bylaws of the NRA explicitly set out the purposes and objectives of the NRA, Defs. Exh. 2 at 1, the role of the ILA within the NRA, *id.*, at 31-33, and the power of the NRA's Board of Directors to authorize the transfer of funds to the ILA. *Id.* at 16-17. Moreover, the Annual Report of the NRA prominently features a description of the activities of the ILA and the funds expended by the ILA. *See, e.g., NRA 1988 Annual Report* 5-6, 18 (Defs. Exh. 4).

The NRA Political Victory Fund

15. The NRA PVF is a separate segregated fund established by the NRA pursuant to the Federal Election Campaign Act, that is, a political action committee. The PVF is not affiliated with any political party.

16. The purpose of the PVF, set out in its Bylaws, is to "promote and strive for the improvement of government by encouraging and stimulating NRA members and other citizens who believe in the preservation of firearms right to take a more active and effective part in government affairs through the electoral process." *Bylaws of the NRA PVF*, Art. II (Defs. Exh. 3).

17. A Board of Trustees has general supervision and control over the affairs and funds of the PVF, establishes

the policies of the PVF, and authorizes all the activities of the PVF. The Board of Trustees consists of employees or officials of the ILA, serving without any additional compensation. The Chairman of the PVF is the Executive Director of the ILA. Any disbursement from the PVF's funds that constitutes a campaign contribution or expenditure under applicable law can be made only by an affirmative vote of not less than three members of the PVF Board of Trustees.

18. The Bylaws of the PVF explicitly provide that "[c]ontributions to the NRA Political Victory Fund shall be solicited and accepted only in conformity with applicable law." *Bylaws of the NRA PVF*, Art. VI, Sec.1 (Defs. Exh. 3).

19. The exclusive method by which the PVF solicits contributions is through direct mail to NRA members. For 1988, the PVF had total receipts of \$4,234,446 and total disbursements of \$4,363,284.

20. In 1988, no fundraising solicitation mailed by PVF was directed to an entity other than a natural person. The PVF has been supported by the ILA, though it has no general policy with respect to such support except that any such support shall comply with applicable laws, including the Federal Election Campaign Act. The ILA supports the PVF as the result of a two-step process. The Board of Trustees of the PVF decides when to request support from the ILA. The Executive Director of the ILA then decides whether or not to grant the PVF's request. The ILA has commonly paid all or some portion of the solicitation expenses of the PVF as they are incurred. Such payments may be reimbursed by the PVF. There is no set pattern for the ILA to pay for the PVF's solicitation expenses, or for the PVF to reimburse such payments. Rather, such transactions arise out of a judgment concerning the relative

needs of the ILA and the PVF at a particular time, a judgment generally based on the budgets and planned activities of the ILA and the PVF and on the actual revenues of these entities as compared to their anticipated revenues.

The Transactions at Issue

21. Underlying the financial transactions at issue in this case are two solicitations mailed to raise funds for the PVF, the first in March, 1988, the second in July, 1988. A copy of the March, 1988 mailing appears as Defs. Exh. 5. This letter does not contain any explicit words directing the reader how to vote or otherwise pointedly exhorting votes for or against particular persons. No business corporations or labor unions were sent this solicitation. Rather, this letter was sent only to NRA members to reiterate the opposition of the PVF to "gun control" legislation and to gain additional contributions. This was a nationwide mailing, not targeted to individuals who could vote for or against the members of Congress referred to in the letter. In this regard, this letter was similar to mailings the PVF has used to solicit contributions in the past. Most of the express advocacy of the PVF takes the form of direct financial contributions to candidates. However, the PVF has at times engaged in express advocacy through the mail. In contrast to the March and July, 1988 solicitation letters, the PVF's mailings that constitute express advocacy are sent only to individuals who can vote for or against a particular candidate, explicitly urge the recipient to vote for or against a particular candidate, and rarely solicit contributions to the PVF. Examples of such express advocacy letters have been submitted as Defs. Exhs. 25, 26.

22. The ILA paid a direct mail firm \$224,071.22 in production cost and \$90,119.56 in postage costs for the

March, 1988 fundraising letter. These payments were made in three checks, a March 24, 1988 check for \$132,756.17 and an April 13, 1988 check for \$91,315.05, both for the production costs, and a June 6, 1988 check for \$90,119.56 for postage.

23. A copy of the July, 1988 mailing appears as Defs. Exh. 6. Like the March, 1988 mailing, this letter does not contain any explicit words directing the reader how to vote or otherwise pointedly exhorting votes for or against particular persons. No business corporations or labor unions were sent this mailing. Rather, this letter was addressed only to NRA members. Again, like the March, 1988 letter, it reiterates the opposition of the PVF to public policies that would deprive law abiding individuals of the right to own firearms and seeks contributions.

24. The ILA paid a direct mail firm \$101,553.94 in postage costs for the July, 1988 fundraising letter. This payment was made by one check, dated July 18, 1988.

25. As the Fiscal Officer of the ILA and the Treasurer of the PVF, it is an important part of my responsibilities to insure that any disbursements from either of these entities fully comply with applicable law. It was my understanding at the time these disbursements by the ILA were made, and it remains my understanding today, that these payments by the ILA were perfectly lawful in that they did not constitute forbidden contributions or expenditures under the regulations of the FEC and under the Federal Election Campaign Act. As the FEC's regulations provide, "Corporations . . . may use general Treasury monies . . . for the establishment, administration, and solicitation of contributions to its separate segregated fund." 11 C.F.R. 114.5(b). See also 2 U.S.C. 441b(b)(2)(C); 11 C.F.R. 114.1(a)(2)(iii). To date the FEC has not suggested that the ILA's payment of the solicitation expenses for the March

and July, 1988 mailings were in any way improper in this case or anywhere else.

26. On August 1, 1988, the PVF reimbursed the ILA for the \$415,744.72 of costs for the March and July, 1988 PVF solicitation mailings that had been paid by the ILA.

27. It was my understanding at the time of the PVF's reimbursement of the ILA payments, and it remains my understanding today, that this transaction was completely lawful under the Federal Election Campaign Act and the regulations of the FEC. Obviously, a separate segregated fund is not prohibited from paying for its own solicitation expenses. Reimbursing the ILA for its payment for those expenses simply achieved that result. This transaction was fully reported to the FEC, and, to date the FEC has not suggested this transaction was improper in this case or anywhere else.

28. On October 20, 1988, the ILA wrote a check for \$415,744.72 to the PVF to return the PVF's reimbursement for the solicitation costs for the March and July, 1988 fundraising letters. The PVF's reimbursement was returned because it was determined that the judgment to reimburse the ILA was made prematurely, the kind of mistake we take considerable pains to avoid in our budgeting and financial planning for the activities of the ILA and the PVF. Indeed, this transaction was the first time such a mistake was made and a PVF reimbursement to the ILA was returned by the ILA to the PVF. Moreover, we plan not to do this in the future, if possible. Planning activities and reliable budgets for the ILA and the PVF, like budgeting for any organization, serves to prioritize activities based on expected resources, to ensure that the resources of the ILA and the PVF are prudently spent, and generally to advance efficient operations. Shifting funds back and forth between the ILA and the PVF can amount to "robbing Peter to pay Paul," a practice obviously at odds with

any notion of sound management of continuing operations like those of the ILA and the PVF. However, we do not have the benefit of a crystal ball in our planning for the ILA and the PVF each year. As we cannot be assured that our expected revenues and budgets, no matter how conservatively prepared, will come to pass, so we cannot state with absolute certainty that a return of a PVF reimbursement like that here will never be a necessary emergency measure in the future. Moreover, I understood at the time of this transaction, and it remains my understanding today, that this transaction was perfectly lawful. The Federal Election Campaign Act excludes the payment for the solicitation expenses of a separate segregated fund from the definition of forbidden contributions or expenditures, but does not address, much less prohibit or restrict, the various ways in which such solicitation expenses can be paid. The end result of these transactions as of October 20, 1988 was that the ILA paid for the solicitation expenses of the PVF with respect to the March and July, 1988 mailings, a lawful result. In addition, no regulation of the FEC addresses or prohibits the return of a reimbursement as was done here, assuming that such a regulation would even be lawful, given the fact that Congress itself has not seen fit in the FECA to constrain the process by which solicitation expenses are paid for.

29. The PVF fully reported the October 20, 1988 transaction to the FEC. Indeed, it is my understanding that the FEC only became aware of the transaction by virtue of the PVF's report.

I hereby certify that the foregoing statements are true and correct, to the best of my knowledge and belief.

Dated this 10th day of July, 1991.

/s/ GRANT A. WILLS

Grant A. Wills

Subscribed and sworn to me this 10th day of July, 1991.

/s/ DENISE DEAR

Notary Public

My commission expires: July 14, 1994

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 91-5360

FEDERAL ELECTION COMMISSION

v.

NRA POLITICAL VICTORY FUND, ET AL., APPELLANTS

[FILED Oct. 22, 1993]

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

BEFORE: Wald, Ruth B. Ginsburg* and Silberman,
Circuit Judges

JUDGMENT

This cause came on to be heard on the record on appeal from the United States District Court for the District of Columbia and was argued by counsel. On consideration thereof, it is

* Former Circuit Judge Ruth B. Ginsburg, now an Associate Justice of the Supreme Court of the United States, was a member of the panel when the case was argued but did not participate in this opinion.

ORDERED and ADJUDGED, by the Court, that the judgment of the District Court appealed from in this cause is hereby reversed in accordance with the Opinion for the Court filed herein this date.

Per Curiam
FOR THE COURT:
RON GARVIN, Clerk

By: /s/ ROBERT A. BONNER

Robert A. Bonner
Deputy Clerk

Date: October 22, 1993

Opinion for the Court filed by Circuit Judge Silberman.

Supreme Court of the United States

No. 93-1151

FEDERAL ELECTION COMMISSION, PETITIONER

v.

NRA POLITICAL VICTORY FUND, ET AL.

ORDER ALLOWING CERTIORARI.

Filed June 20, 1994.

The petition herein for a writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit is granted.

June 20, 1994

Justice Ginsburg took no part in the consideration or decision of this petition.